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## Frisco Green Portal Agreement

For the Development, Management and Hosting of a Green Web Portal for the City of Frisco

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### PARTIES:

City of Frisco  
George A. Purefoy Municipal Center  
6101 Frisco Square Blvd.  
Frisco, TX 75034

Noofangle Media, Inc. ("Noofangle")  
P.O. Box 1543  
Addison, Texas 75001

### Date:

11/16/2009

### Scope:

Development, management, and hosting of a green web portal

### Description of Services:

Noofangle will work jointly with the City of Frisco to design a web portal for its citizens, businesses and employees. Noofangle will then develop the Website, host the Website and regularly publish new articles on a variety of environment topics. The scope of this contract will be for the initial development of the site and ongoing support for 12 months.

### Terms & Conditions

**Term:** 11/01/2009 – 11/01/2010

**Effective Date:** 11/01/2009

**Billing Period:** Monthly

**Payment Terms:** As specified in individual purchase orders set forth in Exhibit A and Exhibit B, which are attached to and made a part of this Frisco Green Portal Agreement (this "Agreement").

This Agreement constitutes a binding agreement between the parties for the development of the Frisco Green Portal entered into between Noofangle Media, Inc. ("Noofangle") and the City of Frisco, Texas ("Frisco"). By signature of this document, Frisco is authorizing Noofangle to build and establish the services specified and ordered in this Order and Frisco agrees to pay the associated fees as detailed in this Agreement.

### Signatures

Noofangle Media, Inc.

The City of Frisco

Marc Montoya

Name Printed

Name Printed

Co-Founder and President

Title

Title

Date

Date

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**Frisco Green Portal Agreement**

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## 1. GENERAL

1.1. Noofangle is in the business of offering Internet services relating to, among other things, the publishing of sites on the World Wide Web portion of the Internet, and Noofangle is willing to provide services to Frisco on the terms and subject to the conditions set forth below; and

1.2. Frisco desires to engage Noofangle, and Noofangle desires to be engaged by Frisco, to provide Internet services on the terms and subject to the conditions set forth below.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Noofangle and Frisco hereby agree as follows:

## 2. TERM and TERMINATION

This Agreement shall be effective when signed by both Parties (the "Effective Date") and thereafter shall remain in effect for twelve (12) months, unless earlier terminated as otherwise provided in this Agreement (the "Initial Term"). Either Party may terminate this agreement, with or without cause, at any time during the Initial Term by giving written notice of termination to the other Party. Unless otherwise terminated by either Party during or at the end of the Initial Term, this Agreement shall renew for additional periods of twelve (12) months (the "Extended Terms"). The Initial Term and all successive Extended Terms are the "Term" of this Agreement. Upon termination, Noofangle shall return all Frisco Intellectual Property and shall cooperate and assist in the transfer of all web hosting and management responsibilities to another provider. If this Agreement is terminated during the Initial Term, Frisco shall compensate Noofangle on a pro-rated basis, based on the amount of work actually performed, approved and accepted by Frisco up to the date of termination.

Notwithstanding the foregoing, this Agreement and the term hereof are subject to the annual appropriation and budgeting of funds by Frisco, in its sole and absolute discretion, to make any payments set forth herein. In the event Frisco does not appropriate and budget any such funds, this Agreement shall end, without notice, on the last day of the annual budget period for which funds were appropriated and budgeted by Frisco.

## 3. SERVICES

### 3.1. Design and Development Services

Noofangle agrees to work with Frisco to jointly design a Green Living Website specifically for Frisco (the "Website") targeted to the residents, businesses and employees of Frisco. Noofangle will provide the design and web development capabilities needed to provide all development and production capabilities needed to build the Website ("Deliverables"). Frisco will provide design input and desired creative designs into the process and will maintain the rights to approval on the design of the Website.

Noofangle will be responsible for all technical and infrastructure services required to host and manage the Frisco Green Portal.

### 3.2. Publishing Services

Once the Website is operational, Noofangle will work with its network of writers and editors to update the site with relevant and topical environmental content each week. The Website content will be a combination of green living articles currently in the inventory of Noofangle as well as original stories on topics relevant to Frisco. Frisco will maintain the right to approve all content on the Website and any content deemed unacceptable by Frisco will be removed immediately by Noofangle upon notification from Frisco.

Except as expressly provided in this Agreement, Frisco agrees that Noofangle is responsible only for developing and publishing the Website, and Noofangle is not responsible for providing any other services or tasks not specifically set forth in DESCRIPTION OF SERVICES.

To the extent that Frisco wishes to receive from Noofangle, and Noofangle wishes to provide to Frisco, services other than the Development and Publishing Services (collectively the "Additional Services"), such Additional Services and the arrangements for their provision shall be set forth in a separate addendum to this Agreement which is duly executed by the Parties (the "Services Addendum"), and the Services Addendum shall be incorporated into, and become a part of this Agreement. (The Development and Publishing Services and the Additional Services will hereinafter be referred to collectively as the "Services").

### 3.3. Availability of Website

Unless otherwise expressly indicated on DESCRIPTION OF SERVICES hereto, the Website shall be accessible to third Parties via the World Wide Web portion of the Internet twenty-four (24) hours a day, seven (7) days a week, except for scheduled maintenance and required repairs, and except for any loss or interruption due to causes beyond the control of Noofangle or which are not reasonably foreseeable by Noofangle, including, but not limited to, interruption or failure of telecommunication or digital transmission links and Internet slow-downs or failures. If required by law, such Services Addendum may need City Council approval.

### 3.4. Development and Publishing Services Fees

Frisco shall pay Noofangle all fees for the Development and Publishing Services in accordance with the applicable fee and payment schedule set forth in the associated purchase orders. Noofangle expressly reserves the right to change its rates charged hereunder for the Services during any renewal term.

### 3.5. Additional Services Fees

Unless otherwise agreed in writing, Frisco shall pay to Noofangle all fees for Additional Services on a time and materials basis as invoiced by Noofangle and agreed to by both Parties under the Services Addendum.

## 4. Warranties

### 4.1. Noofangle Warranties

Noofangle represents and warrants that:

1. Noofangle has the power and authority to enter into and perform its obligations under this Agreement;
2. Noofangle's services under this Agreement shall be performed in a good and workmanlike manner;
3. Noofangle shall not, in connection with the Web Site, Deliverables, or any related materials or Services provided under this Agreement, infringe or violate any rights of third Parties; including, without limitation, rights of publicity, rights of privacy, patents, copyrights, trademarks, trade secrets, and/or licenses;
4. Noofangle shall obtain and at all times during the term of this Agreement, maintain insurance in an amount to cover reasonable expenses related to any claims

#### 4.2. Frisco Warranties

Frisco represents and warrants that it has the power and authority to enter into and perform its obligations under this Agreement;

## 5. Intellectual Property

All materials, products, and modifications developed or prepared by Noofangle under this Agreement, including without limitation the Website, the Frisco Content, domains, forms, trade dress, look and feel of the Website, images viewable on the Internet, any HTML elements relating thereto, and software, including the Deliverables and any updates thereto, are the property of Frisco (the "Frisco Intellectual Property") and all right, title and interest therein shall vest in Frisco and shall be deemed to be a "work made for hire" under United States copyright law (17 U.S.C. § 101 et seq.) and made in the course of this Agreement. To the extent that title to any such Frisco Intellectual Property may not, by operation of law, vest in Frisco or such works may not be considered to be work made for hire, all right, title and interest therein are hereby irrevocably assigned to Frisco. All such materials shall belong exclusively to Frisco with Frisco having the right to obtain and to hold in its own name, copyrights, registrations or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. Noofangle agrees to give Frisco and any person designated by Frisco, any reasonable assistance required to perfect and enforce the rights defined in this Section.

Notwithstanding the above, Frisco hereby grants to Noofangle a worldwide, royalty-free, revocable license to use Frisco Intellectual Property on other sites and media, subject to approval of Frisco, with such approval not to be unreasonably withheld.

In instances where Noofangle develops content, such as articles and images, on its own and not specifically for Frisco, but for use on or in connection with the Website (the "Noofangle IP"), Noofangle shall retain all Intellectual Property rights in such Noofangle IP, except that Noofangle hereby grants a worldwide, royalty-free, revocable license to Frisco to use such Noofangle IP on or in connection with the Website.

In some instances, Noofangle will develop and provide articles and images specifically for Frisco (the "Frisco Content"). Such Frisco Content shall be clearly identified as such to distinguish it from Noofangle IP.

#### NOOFANGLE INDEMNITY OBLIGATION

**Noofangle covenants, agrees to, and shall DEFEND (with counsel reasonably acceptable to Frisco), INDEMNIFY, AND HOLD HARMLESS the City of Frisco, Texas and the elected officials, the officers, employees, representatives, and volunteers of the City of Frisco, Texas, individually or collectively, in both their official and private capacities (the City of Frisco, Texas, and the elected officials, the officers, employees, representatives, and volunteers of the City of Frisco, Texas each being an "Frisco Person" and collectively the "Frisco Persons"), from and against any and all claims, liabilities, judgments, lawsuits, demands, harm, losses, damages, proceedings, suits, actions, causes of action, liens, fees, fines, penalties, expenses, or costs, of any kind and nature whatsoever made upon or incurred by the City of Frisco, Texas and/or any other Frisco Person, whether directly or indirectly, (the "Claims"), that arise out of, result from, or relate to: (i) the Website and all content and Intellectual Property developed by Noofangle, its owners, directors, officers, shareholders, managers, partners, employees, agents, consultants, contractors, subcontractors, invitees, patrons, guests, customers, licensees, sublicensees, or any other person or entity for whom Noofangle is legally responsible, and their respective owners, directors, officers, shareholders, owners, directors, officers, shareholders, managers, partners, employees, agents, consultants, contractors, subcontractors, invitees, patrons, guests, customers, licensees, sublicensees (collectively, "Noofangle Persons"), (ii) any representations and/or warranties by Noofangle under this Agreement, and/or (iii) any act or omission under, in performance of, or in connection with this Agreement by Noofangle or by any of the Noofangle Persons. SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY FRISCO PERSON, OR CONDUCT BY ANY FRISCO PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND. However, Noofangle's liability under this clause shall be reduced by that portion of the total amount of the Claims (excluding defense fees and costs) equal to the Frisco Person or Persons' proportionate share of the negligence, or conduct that would give rise to strict liability of any kind, that caused the loss. Likewise, Noofangle's liability for Frisco Person's defense costs and attorneys' fees shall be reduced by that portion of the defense costs and attorneys' fees equal to Frisco Person or Persons' proportionate share of the negligence, or conduct that would give rise to strict liability of any kind, that caused the loss.**

**Noofangle shall promptly advise Frisco in writing of any claim or demand against any Frisco Person related to or arising out of Noofangle's activities under this Agreement and shall see to the investigation and defense of such claim or demand at Noofangle's sole cost and expense. The Frisco Persons shall have the right, at the Frisco Persons' option and own expense, to participate in such defense without relieving Noofangle of any of its obligations hereunder.**

**6. Limitation of Liability**

EXCEPT WITH RESPECT TO LIABILITY ARISING FROM NOOFANGLE'S INDEMNIFICATION OBLIGATIONS HEREUNDER, GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR ABANDONMENT OF ITS OBLIGATIONS HEREUNDER (THE "EXCEPTIONS"), NEITHER PARTY HERETO SHALL BE LIABLE TO THE OTHER FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES (EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUE OR ANTICIPATED PROFITS OR LOST BUSINESS.

**7. Amendment**

No amendment, waiver, or modification of this Agreement or any provision of this Agreement shall be valid unless in writing, stating with specificity the particular amendment or modification to be made, and duly executed by the Noofangle and Frisco.

**8. Enforceability**

If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, administrative agency or as a result of future legislative action, such holding or action shall be strictly construed and the unenforceable provision shall be deemed severable from the remainder of the Agreement to the extent permitted by law, and the validity or effect of any other provision of this Agreement shall remain binding with the same effect as though the void parts were deleted.

**11. Miscellaneous**

11.1 Inasmuch as this Agreement is intended to secure the specialized services of Noofangle, Noofangle shall not and shall have no power or authority to assign, transfer, delegate or otherwise transfer any interest or duty herein without the prior written consent of Frisco and any such assignment, transfer, delegation or transfer without Frisco's prior written consent shall be considered null and void.

11.2 The provisions of this Agreement are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any third person or entity.

11.3 Notices. Any notices to be provided to a party in connection with this Agreement shall be deemed provided when delivered to the party entitled to receive such notice at the address for such party as listed above.

11.4 Privacy. All records and all other information, written or oral, provided to or obtained by Noofangle pursuant to or in connection with this Agreement, are confidential, and shall not be given, transmitted to, or otherwise made available by or on behalf of Noofangle to any person (including, without limitation, any individual) or business entity of any kind whatsoever (including, without limitation, any corporation, partnership, limited liability company, and sole proprietorship) without the prior written approval of Frisco. This obligation shall survive the expiration or termination of this Agreement. Noofangle further agrees that upon request by Frisco, or upon the termination or expiration of this Agreement, Noofangle will immediately provide and/or return to Frisco any and all records and all other information which may have been provided to or prepared by or for Noofangle, or which is in Noofangle's possession or under Noofangle's control. In the event of Noofangle breach or threatened breach of this provision, Frisco shall be entitled to an injunction or restraining order obtained from any court having appropriate jurisdiction restraining Noofangle from any unauthorized use or disclosure of such information, but such injunction or restraining order shall not limit Frisco's right to seek any other remedy available to Frisco, whether at law or in equity or otherwise, in connection with such breach or threatened breach.

11.5 INSURANCE: At all times in connection with this Agreement, Noofangle shall purchase and maintain in a company or companies lawfully authorized to do business in Texas such insurance coverages as set forth below:

(a) Commercial general liability insurance for all of its operations at minimum combined limits of \$1,000,000 per occurrence and \$2,000,000 general aggregate. Coverage must be amended to provide for an each-project aggregate limit of insurance.

(b) Professional liability (Errors & Omissions) – with a per loss limit policy period aggregate limit of not less than \$1,000,000 per occurrence. Said insurance shall provide coverage for claims arising out of Noofangle's errors, omissions, wrongful acts, negligence, misstatement, or breach of duty in the rendering, or failure to render, the services for which it was contracted.

With reference to the foregoing insurance requirement, Noofangle shall specifically endorse applicable insurance policies as follows:

1. The City of Frisco, Texas shall be named as an additional insured with respect to all liability policies.
2. All liability policies shall contain no cross liability exclusions or insured versus insured restrictions applicable to the claims of the City of Frisco.
3. A waiver of subrogation in favor of the City of Frisco, Texas, its officers, employees, and agents shall be contained in each policy required herein.
4. All insurance policies shall be endorsed to require the insurer to immediately notify the City of Frisco, Texas of any change in the insurance coverage that would bring such coverage below the minimum amounts required by this Section.
5. All insurance policies shall be endorsed to the effect that the City of Frisco, Texas will receive at least sixty (60) days' notice prior to cancellation or non-renewal of the insurance.
6. All insurance policies, which name the City of Frisco, Texas as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.

7. Required limits may be satisfied by any combination of primary and umbrella liability insurances.
8. Developer may maintain reasonable and customary deductibles.
9. Insurance must be purchased from insurers that are financially acceptable to the City and licensed to do business in the State of Texas.

All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent, delivered to Noofangle and the City prior to the commencement of any Work under the Construction Contract, and shall :

1. List each insurance coverage described and required herein. Such certificates will also include a copy of the endorsements necessary to meet the requirements and instructions contained herein.
2. Specifically set forth the notice-of-cancellation or termination provisions to the City of Frisco.

Upon request, Noofangle shall furnish the City of Frisco with complete copies of all insurance policies certified to be true and correct by the insurance carrier.

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